FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 26 1950
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 559

STANDARD DREDGING CORPORATION,
Appellant,

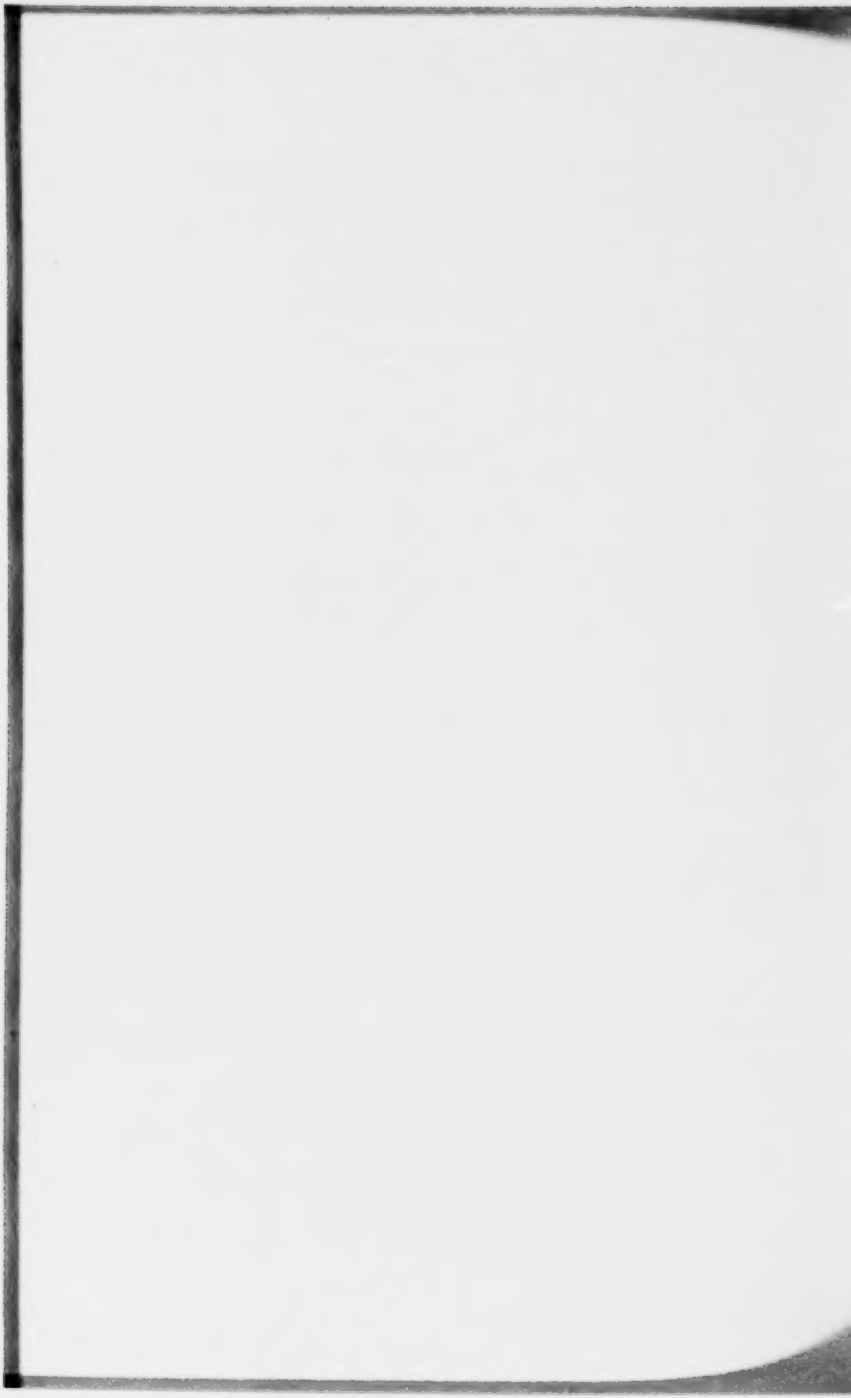
vs.

STATE OF LOUISIANA, EX REL., RUFUS W. FONTENOT, DIRECTOR OF REVENUE

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

JOHN L. MADDEN,
C. ELLIS OTT,
Counsel for Appellee.



POOR COPY

BLEED THROUGH

INDEX

Subject Index

	Page
Statement opposing jurisdiction and motion to dismiss or affirm	1

Table of Cases Cited

City of Boston v. *Jackson, Treasurer,* 260 U. S. 309, 43 S. Ct. 129	5
Coverdale, Sheriff, v. *Arkansas-Louisiana Pipe Line Co.,* 303 U. S. 604, 58 S. Ct. 736	5
Hodges v. *Snyder,* 261 U. S. 600, 43 S. Ct. 435	5
J. Bacon & Sons v. *Martin, etc.,* 305 U. S. 380, 59 S. Ct. 257	4
Old Dominion Steamship Co. v. *Virginia,* 198 U. S. 299, 25 S. Ct. 686, 49 L. ed. 1059	5
Ott v. *Mississippi Valley Barge Line Co.,* 336 U. S. 169, 69 S. Ct. 432, 93 L. ed. 431	5
Standard Dredging Corporation v. *Murphy,* 319 U. S. 306, 63 S. Ct. 1067	5
State, ex rel. Porterie v. *H. L. Hunt, Inc.,* 182 La. 1073, 162 So. 777	6
Trinity Farm Construction Co. v. *Grosjean,* 291 U. S. 466, 54 S. Ct. 469	5
Utley v. *City of St. Petersburg,* 292 U. S. 106, 54 S. Ct. 593	7

Statutes Cited

Act of the State of Louisiana, Section 3 (Act 5 of the Fourth Extra Session of 1935)	2
Constitution of the United States, 14th Amendment	6

POOR COPY

BLEED THROUGH

SUPREME COURT OF LOUISIANA

No. 38,784

STATE OF LOUISIANA EX REL., RUFUS W. FONTENOT, DIRECTOR OF REVENUE

versus

STANDARD DREDGING CORPORATION

STATEMENT OF APPELLEE MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT TO ENTERTAIN THE APPEAL HEREIN ASSERTED BY THE APPELLANT IN THE JURISDICTIONAL STATEMENT FILED HEREIN, INCLUDING A MOTION TO DISMISS THE APPEAL, OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF LOUISIANA.

Now comes the State of Louisiana, through the Collector of Revenue of said State, and under Rule 12, Paragraph 3, of the Rules of the Supreme Court of the United States, opposes the statement of appellant, Standard Dredging Corporation, contending that the United States Supreme Court has jurisdiction of the appeal herein taken, and as grounds for opposing said jurisdictional statement, appellee shows:

(1) With reference to that part of the statement of appellant as to jurisdiction wherein it is stated in Paragraphs

(a) and (b) that appellant attacked the validity of the act of the State of Louisiana imposing the tax sought to be collected on the grounds that the tax on power generated by machinery on vessels licensed by the Federal Government to engage in the coasting trade is an invasion of the admiralty jurisdiction of the United States and constitutes an undue burden on interstate commerce, appellee now shows and avers that Section 3 of the Act of the State of Louisiana (Act 5 of the Fourth Extra Session of 1935), imposing the tax here in contest, reads as follows:

> "In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation which person, firm, corporation or association of persons uses in the conduct of such business or occupation at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this Act, shall be subject to the payment of an excise, license or privilege tax of Fifty Cents (50¢) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover' or 'prime movers' operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this Act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during the periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association

POOR COPY

BLEED THROUGH

of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill, cotton gin, or a mill for grinding sugar cane or producing raw sugar, or in milling rice, corn, cotton seed or other agricultural products, or in operating an irrigation pumping plant, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air where the primary use of such power is self-propulsion, provided, that the tax imposed by this Section shall not apply to machinery and apparatus used for stand-by or emergency purposes."

As shown by the above quoted part of the statute, and as held by the State Court, the mechanical power generated by the machinery of the vessels primarily for self-propulsion as a means of navigation on navigable waters is not taxed, but the *tax is imposed only on the power generated by the machinery on said vessels for use in conducting a business wholly within the State of Louisiana by appellant*, and in no way hinders or impedes navigation on waters within the admiralty jurisdiction of the United States. The Supreme Court of Louisiana found and held on this point as follows:

"The right to regulate commerce and control navigation is in the Congress of the United States, the various

states, in adopting the Constitution, having surrendered to the Federal Government all authority in such matters; and the states and their political subdivisions are therefore without authority to enact laws which will interfere with commerce or which will impede or place a burden on navigation. However, the tax here imposed, as previously stated, is solely on the use of electrical or mechanical power produced by the defendant corporation and used in its business while within the territorial limits of the State of Louisiana, and is on only that part of the power which is used in connection with the particular business of dredging, and not on that part which may be used in the navigation of the vessels—though produced by the same machinery. It is clear, therefore, that the imposition of the power tax in no way affects the permission granted under the Federal license to navigate waters of the United States for the purpose of carrying on the coasting trade, and imposes no additional condition to the privilege of carrying on such trade; nor does it result in the regulation or impeding of navigation."

The interpretation and construction of the tax law here involved and its application to the facts of the case, as found by the State Supreme Court, will control in determining jurisdiction on the appeal to the United States Supreme Court. *J. Bacon & Sons* v. *Martin, Commissioner of Revenue of Commonwealth of Kentucky,* 305 U. S. 380, 59 S. Ct. 257. Accepting the construction of the statute made by the State Supreme Court, no substantial federal question is presented on the appeal on these two points for the reason that this construction brings the questions within those cases holding that a state may exercise its taxing power on registered United States vessels, so long as the tax does not have the effect of impeding navigation or as constituting a condition or license for the right to use navigable waters for navigation purposes, or create an undue burden on commerce on the navigable waters of the United States.

POOR COPY

BLEED THROUGH

The construction of the state statute by the state court to the effect that the tax is only levied on the power generated by the vessels for use in carrying on the business of appellant in the state, and is not levied on the power generated on the vessels for use in navigation on waters over which the Federal Government has control, brings the questions within the following adjudicated cases of the United States Supreme Court holding similar taxes valid: *Coverdale, Sheriff* v. *Arkansas-Louisiana Pipe Line Company,* 303 U. S. 604, 58 S. Ct. 736; *Standard Dredging Corporation* v. *Murphy,* 319 U. S. 306, 63 S. Ct. 1067; *Ott* v. *Mississippi Valley Barge Line Co. et al.,* 336 U. S. 169, 69 S. Ct. 432, 93 L. ed. 431; *Trinity Farm Construction Company* v. *Grosjean,* 291 U. S. 466, 54 S. Ct. 469; *Old Dominion Steamship Company* v. *Virginia,* 198 U. S. 299, 25 S. Ct. 686, 49 L. ed. 1059.

Where the state court applies its construction of the statute to the general principles declared by the United States Supreme Court on similar questions, the appeal will be dismissed by the United States Supreme Court, or the judgment will be affirmed, as presenting no substantial constitutional question. *J. Bacon & Sons* v. *Martin, Commissioner of Revenue, supra; City of Boston* v. *Jackson, Treasurer,* 260 U. S. 309, 43 S. Ct. 129; *Hodges et al.* v. *Snyder et al.,* 261 U. S. 600, 43 S. Ct. 435.

(2) Appellant's statement as to jurisdiction contained in Paragraph (c) to the effect that the state statute violates the Fourteenth Amendment to the Constitution of the United States in that it attempts to impose double taxation on appellant in requiring the payment of a license tax to engage in the business of a contractor, and also requires an additional license tax to produce mechanical power as an integral part of its business as a general contractor, presents no substantial federal question to support this appeal. The Supreme Court of Louisiana held that the tax did not violate

the Constitution of Louisiana which authorizes the Legislature to levy license taxes, and the power tax here in question is an additional tax specially authorized by the State Constitution. The decision of the State Supreme Court will be followed in its holding that the power tax statute does not violate the State Constitution. *State ex rel. Porterie et al.* v. *H. L. Hunt, Inc.*, 182 La. 1073, 162 So. 777; *Coverdale, Sheriff* v. *Arkansas-Louisiana Pipe Line Company, supra.*

Appellant does not show wherein the power tax on the production of mechanical power for use in its business as a general contractor using other taxable means and materials constitutes double taxation, so as to deprive it of any rights or privileges under the Fourteenth Amendment to the United States Constitution, nor deny to it the equal protection of the laws as related to others similarly situated. The State Supreme Court found that the power tax here in question does not violate any constitutional provision of Louisiana, and while not passing directly on the question of whether or not the tax violates the Federal Constitution, the effect of its holding is that the tax violates no constitutional provisions, as appears from the following language used by the State Court in passing on the question:

> "Article X, Section 8 of the Louisiana Constitution provides that license *taxes* may be levied on such classes of persons, associations of persons and corporations pursuing any business or occupation as the Legislature may deem proper (with certain exceptions), and provides that such license taxes may be classified, graduated or progressive; however, there is no limitation as to the number or kind of license taxes which may be imposed under this provision of the Constitution and one person may avail himself of one or more different privileges, for each of which he may be required to pay a tax or license fee. The requirement frequently made essential to the existence of double taxation in the unconstitutional sense, namely, that both imposi-

POOR COPY

BLEED THROUGH

tions must be against the *same taxable subject*, is here lacking, for in the case of the occupational license, the tax is imposed for the privilege of engaging in the business of contractor in the State, whereas in the case of the power tax, the levy is based on the use of electrical or mechanical power in the conduct of a business, measured by the horsepower of capacity of the machinery used in the production of the power. It follows that although the defendant has paid the occupational license tax, there is no infringement of his constitutional rights because of liability for a specific license tax upon the use of a particular agency necessary to be employed in the conduct of his business."

In view of this holding by the State Court, it is submitted that no substantial federal question is presented involving the denial of a right or privilege under the Fourteenth Amendment of the Federal Constitution. *Utley et al. v. City of St. Petersburg*, 292 U. S. 106, 54 S. Ct. 593.

WHEREFORE, appellee respectfully submits this statement showing that the questions upon which the decision of this cause depends are so unsubstantial as not to need further argument, and appellee, the State of Louisiana, through its Collector of Revenue, respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Supreme Court of Louisiana, rendered on December 9, 1949.

Respectfully submitted,

JOHN L. MADDEN,
State Capitol Building,
Baton Rouge, La.;
(S.) C. ELLIS OTT,
Bogalusa, La.,
Attorneys for Appellee.